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February 11, 2021

ELECTRONICALLY

The Chambers of the
Honorable John P. Cronan, U.S.D.J.
United States District Court
United States District Courthouse
500 Pearl Street
New York, New York 10007

Re: Fabio Americo Herrera v. Domino's Pizza LLC and David J. Shields
Case No. 18 Civ. 2996 (JPC)(RWL)
Our File: 4267.0110

Dear Judge Cronan:

Please recall that this office represents Defendants, Domino's Pizza LLC and David J. Shields, in the referenced action.

I write with the knowledge and consent of Plaintiff's counsel Albert Kim.

Sustained efforts over many weeks to secure the voluntary appearance of Plaintiff's last remaining expert Robert Haar, M.D. for a non-party deposition have been unsuccessful.

A Subpoena Ad Testificandum was previously served on December 4, 2020 whereupon we were advised that the doctor would not be available until the second week of January. Since that time, communication with the doctor's office to reschedule and advance the issue has been difficult.

The parties therefore now request that Your Honor "So Order" the attached Subpoena, made returnable for February 25, 2021. I have copied Dr. Haar's office manager on this letter.

The parties are mindful of the fact that the cut-off date for expert discovery is currently February 22, 2021. For the moment, we will hold off on requesting another extension as I would like for that to be our final such request.

Thank you for your kind consideration.

Respectfully yours,

Christopher Kendric

Federal Rule of Civil Procedure 45(a)(3) authorizes Defendants' attorney to issue a subpoena. Fed. R. Civ. P. 45(a)(3). A subpoena signed by Defendants' counsel "is a mandate of the court sufficient to require compliance." *Anderson v. City of New York*, No. 06 Civ. 5363 (KAM) (VVP), 2009 WL 3731973, at *1 (E.D.N.Y. Nov. 6, 2009). Thus, because a court order is not required to issue a subpoena under Rule 45, Defendants' request that the Court "So Order" the subpoena is DENIED. If Dr. Haar fails to comply with the subpoena, Defendants may move to compel discovery under Federal Rule of Civil Procedure 37(a) and request that the Court issue an order to show cause why the Dr. Haar should not be held in contempt for failing to comply with the subpoena. *See* Fed. R. Civ. P. 45(g).

Enclosure

cc: (electronically)
ECF Clerk
Clerk of the Court
United States District Courthouse
500 Pearl Street
New York, New York 10007

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SO ORDERED.

Date: February 11, 2021
New York, New York



JOHN P. CRONAN
United States District Judge